
Government of the District of Columbia



Metropolitan Police Department

Testimony of
Charles H. Ramsey
Chief of Police

***Public Hearing on “Electronic Recording Procedures
and Penalties Act of 2005,” Bill 16-138***

Committee on the Judiciary
Phil Mendelson, Chair
Council of the District of Columbia

May 19, 2005

Council Chamber
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Chairman Mendelson, members of the Committee, staff and guests ... I appreciate the opportunity to update the Committee on the Metropolitan Police Department's implementation of the District's law on the electronic recording of custodial interrogations, and to offer comment on the new legislation now before the Committee, the "Electronic Recording Procedures and Penalties Act of 2005." The text of my prepared remarks can be found on the MPD website: www.mpd.dc.gov.

Let me begin by stating that the Metropolitan Police Department generally supports the "Electronic Recording Procedures and Penalties Act of 2005" because it would provide for one clear set of standards governing electronic recording of custodial interrogations. At the same time, the proposed legislation would remove some provisions of the Electronic Recording Procedures Act of 2004 that our Department has opposed on policy and operational grounds.

Specifically, the 2004 law creates an evidentiary presumption that certain statements, if not electronically recorded, are involuntary. This presumption would apply regardless of the reason the statement was not recorded -- whether due to equipment failure, inadvertent operator error, etc.

Our Department supports the electronic recording of custodial interrogations. And we support it not simply because electronic recording is the law in the District of Columbia. We support electronic recording because it is good, sound public policy that helps to protect the interests of both the MPD and the individuals being interrogated.

Electronic recording of interrogations has emerged as a "best practice" in the field of law enforcement, and our Department is committed to setting the standard for police policies and practices in the area of criminal investigations.

DC law pertaining to the electronic recording of interrogations, as well as the MPD's own internal policies and procedures for implementing the law, are spelled out for our members in Departmental General Order 304.16. The latest version of this directive was published in January 2005, to reflect the latest changes in law. In conjunction with the US Attorney's Office, the MPD provided our detectives with specialized training on the General Order, including the operation of the recording equipment. And "refresher" courses are being incorporated into our ongoing in-service training as well.

Beyond training, we are also taking steps to ensure that our members are following the law and our internal procedures on electronic recording. Our Office of Professional Responsibility has established an auditing function that has conducted some preliminary work in this area and is continuing to refine and finalize its auditing procedures.

Their initial inquiries have found that equipment is installed in our interview rooms and is generally operational; interrogations are being electronically recorded; units have sufficient supplies at their disposal, and there are systems in place to log and track recordings. Staff has uncovered some administrative and housekeeping issues that need to be addressed -- for example, the procedures for logging and storing tapes need improvement in some units. And, as you will hear from prosecutors, there have been some isolated instances in which recording equipment has malfunctioned. These issues are being addressed through upgrades in technology and more detailed protocols for handling recordings. However, to our knowledge, there have been no willful violations of either the emergency or the permanent legislation on electronic recordings.

In the area of technology, we are in the process of upgrading our existing VHS-tape system to a digital recording system. This shift will have many advantages, including greater reliability, reduced costs over the long term, and easier, more flexible and redundant storage options. For example, digitally recorded interrogations can be easily stored on both a central hard drive and on one or more CDs. Compared with the current, more cumbersome process of recording and storing all interrogations on VHS tapes, this change will dramatically reduce the amount of space needed for storage and will make retrieval and reproduction much easier and efficient. As we upgrade our recording technology, we will ensure that all appropriate security measures are taken to safeguard the privacy and integrity of the recordings.

In addition to auditing our own internal policies and procedures, we continue to monitor what impact, if any, the requirements on electronic recording are having on criminal investigations and prosecutions. Our review suggests no adverse impact thus far on our ability to interview suspects and obtain information from them. In fact, the Office of the Superintendent of Detectives reports an increase in videotaped statements in the last few months. In those cases where a suspect agrees to be interrogated only on the condition that the recording equipment be turned off, we record the suspect's conditional consent, as required by our General Order.

The bottom line: our members are getting more familiar and more comfortable with the electronic recording law, and more adept at carrying out the specific provisions of the law and MPD internal policies and procedures. There is still fine-tuning that needs to be done in some administrative areas, and technology upgrades are in order as well. But overall, we are making good progress.

* * * * *

As we move forward, I think it is critical that the underlying law on electronic recordings be clarified and standardized. I want to reiterate that our Department generally supports the "Electronic Recording Procedures and Penalties Act of 2005." It would provide for one clear set of standards governing electronic recording of custodial interrogations. At the same time, the proposed legislation would remove some provisions of the Electronic Recording Procedures Act of 2004 that our Department has opposed on policy and operational grounds.

Specifically, the 2004 law creates an evidentiary presumption that certain statements, if not electronically recorded, are involuntary. This presumption would apply regardless of the reason the statement was not recorded -- whether due to equipment failure, inadvertent operator error, etc. The statute further provides that this presumption can be overcome only if the prosecution proves, by clear and convincing evidence, that the statement was, in fact, voluntarily given. This is an unreasonable burden that has the potential to undermine criminal prosecutions and further victimize crime victims, their families and communities for circumstances that are largely beyond anyone's control.

We believe that it is a judge who should ultimately decide -- and always has decided -- whether a confession or defendant statement is to be allowed at trial. The existing statute unnecessarily restricts that judicial discretion, while creating an unreasonably high evidentiary hurdle for prosecutors to overcome. Law enforcement, prosecutors, victims and the community should not be penalized simply because a recording device broke in the middle of an interrogation.

The “Electronic Recording Procedures and Penalties Act of 2005” removes this provision from the 2004 law, and replaces it with one that would instead penalize individual MPD members who knowingly and willfully violate the law on electronic recordings. As I mentioned at the beginning of my statement, our Department supports the overarching policy of recording custodial interrogations, and we will not tolerate members who knowingly violate the law in this area. In fact, General Order 304.16 specifies that members who knowingly violate the law or the Order shall be subject to administrative sanctions ranging from suspension to termination. Holding these individuals accountable for clear and blatant violations of the law seems to make a lot more sense than penalizing victims and communities for inadvertent police errors or circumstances beyond our control, as the current law does.

* * * * *

In closing, let me repeat that electronic recording of custodial interrogations is good public policy and sound police practice. It is not weakening our Department’s ability to conduct criminal investigations, and it is providing important protections to both police personnel and criminal suspects. The MPD is committed to fully implementing DC law, as well as internal policies and procedures, in the most effective and efficient manner possible.

To support our efforts, however, we need one clear set of legal standards to follow. We believe that the proposal before the Committee improves upon existing law and provides the type of guidance we need to move forward in this area.

Thank you again. My staff and I would be happy to address any questions you may have.